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No. 83-572

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FLOYD C. BALDWIN, *et al.*,
Petitioners,

v.

CITY OF WINSTON-SALEM, N.C., *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITIONERS' REPLY BRIEF

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November 18, 1983

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ARGUMENT

Two points made in the Brief in Opposition filed by Respondents City of Winston-Salem, N.C., et al., merit this brief Reply.

1. Respondents assert that the broad language of Hunter v. City of Pittsburgh, 207 U.S. 161 (1907), forecloses attacks on municipal annexations under the Fourteenth Amendment's due process clause. Brief in Opposition at 11. Petitioners agree that Hunter has been so construed, as in the case before this Court, but contend that this is the very reason why the writ of certiorari should be granted. Petitioners assert that the Hunter dictum is no longer sound precedent because the principles underlying Fourteenth Amendment adjudication have changed since Hunter was decided in 1907; that due process, contrary to Hunter, prohibits arbitrary annexations; and that this case is thus appropriate for review.

2. Respondents state that petitioners are "incorrect" in their contention that the North Carolina courts cannot review municipal annexations for unconstitutional arbitrariness. Brief in Opposition at 21. Respondents are in error. It is true that the North Carolina state courts have examined the constitutionality of the North Carolina annexation statute itself. See, e.g., Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980). But those courts cannot and will not examine whether conduct taken to effect an annexation is arbitrary and capricious, as principles of due process require.

As respondents have admitted, the definitive decision as to the scope of review of annexation proceedings is the

North Carolina Supreme Court's opinion in In re Annexation Ordinance, 303 N.C. 220, 229, 278 S.E.2d 224, 230 (1981), which held that no "separate test of 'reasonableness' [is found] within the limited scope of judicial review permitted in annexation cases." See Petition at 5-7, 32-33. Indeed, respondents' present argument is diametrically contrary to their assertions in the North Carolina state courts that judicial review of annexations is limited -- precisely as petitioners here contend -- to the matters specifically enumerated in N.C. Gen. Stat. § 160A-50(a)-(f), and that all other issues are irrelevant. These assertions are found in respondents' pleadings lodged with the Fourth Circuit in this case. See, e.g., Motion in

Limine, filed in Forsyth Citizens Opposing Annexation, et al. v. City of Winston-Salem, et al., No. 82-CUS-4481 (Super. Ct. N.C.). Respondents' convenient turnabout here should not obscure the unconstitutionally narrow scope of review allowed by the statute.

CONCLUSION

For the foregoing reasons, and for those set forth in the Petition, this Court should grant the writ of certiorari to the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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